

Key takeaways from the 1st Resolution Plan approved for a financial service provider under IBC 2016

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A. Introduction

Devan Housing Finance Limited (DHFL) is one of the biggest and first ever housing finance company that was sent to NCLT for insolvency resolution under IBC' 2016 after it defaulted in its debt obligation. IBC' 2016, originally, did not had provisions for process relating to insolvency resolution for a financial service provider. It was in 2019, when big NBFC such as DHFL, IL&FS started defaulting, the legal framework for insolvency resolution of financial service provider was introduced. In any economy, if any financial institution faces financial stress, sentiments in the bond market are badly impacted. It is for this reason that such stress has to be detected and mitigated at early stage and adequate measure have to be taken in quick fashion to retain investors confidence in the bond market. Interestingly, application for initiating CIRP against DHFL was admitted within a period of 4 days of filing the petition by RBI.

The complex nature of business operations carried out by DHFL, makes the case of DHFL's insolvency saga a unique one. Various complexity involved in the case of DHFL can be attributed to following reasons-

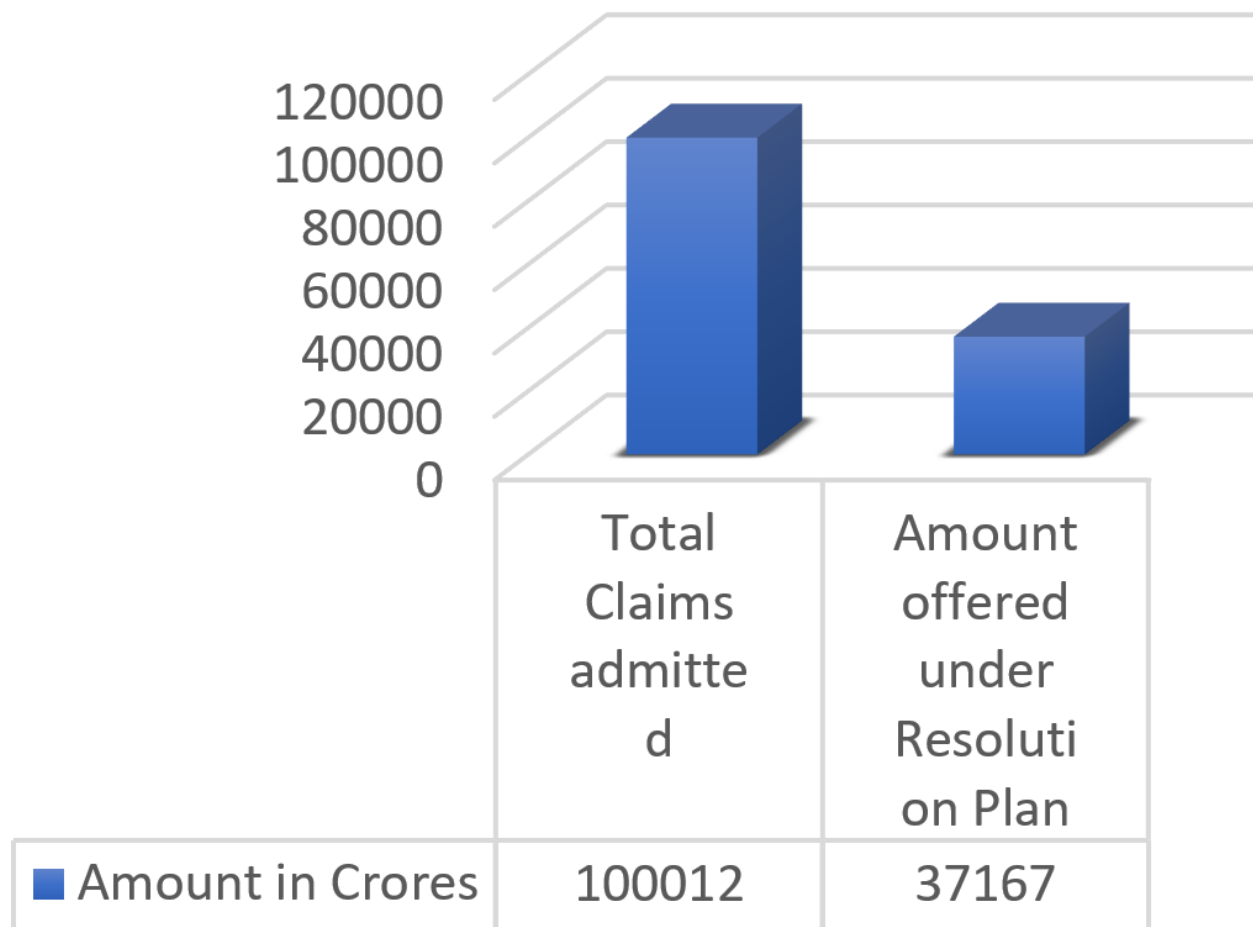
- a. First ever financial service provider to be tried under IBC for insolvency Resolution.
- b. Total default amount involved in the matter is approximately Rs. 1 Lakh Crore.
- c. More than 1 lakh retail investors had invested their hard earned money in the fixed deposits of DHFL.
- d. Committee of creditor of DHFL comprised of as many as 77 CoC members.

B. DHFL Resolution Plan at a glance

As many as 24 resolution applicants had participated in the Resolution Process of DHFL and the Resolution Plan submitted by Piramal Capital and Housing Finance Limited got mandate by CoC and finally it was approved by NCLT on 7th June' 2021. Copy of order of NCLT was uploaded on 13th June 2021.

▪ **Payment offered by Piramal in the Resolution Plan**

The Resolution Plan submitted by Piramal offers about 37% payout to the creditors.



The settlement of creditors include payment of 17,700 in cash and remaining by way of issue of Non-convertible debenture carrying coupon rate of Rs.6.75 pa for 10 years.

- **Capital restructuring under the Resolution Plan**

Till date of approval of Resolution Plan, shares of DHFL were traded on stock exchange. Under the Resolution Plan, entire equity share of DHFL are being proposed to be delisted and cancelled. Piramal Capital and Housing finance Limited would subscribed to 100% equity of DHFL and would be later on merged into DHFL as a process of reverse demerger and its equity would then be subscribed by parent company of Piramal group i.e. Piramal Enterprises Limited.

- **Dissenting Financial Creditors treatment**

NCLT has while approving the Resolution Plan, modified the treatment to be given to dissenting financial creditor. Plan originally provided for offering cash or debt securities to dissenting financial creditors. However, NCLT had keeping in view the order of Supreme court in Jaypee Kingston, directed that dissenting financial creditor should be paid in cash only and debt securities can not be offered to them towards their settlement.

- **Differential treatment to retail and other investors**

Investors of DHFL included around 70 thousand retail investors who had invested in Fixed deposits,

Lakhs of Employees of UP State Power Sector Employees Trust, Board of Trustees of UP Power Corporation Contributory Provident Fund Trust, investment by Capgemini Business Services India Ltd, Employees Provident Fund Trust, other claimants falling in the similar category. These investors, running into lakhs also included senior citizens, who had deposited their hard earned savings, the employees of the PF Trust which is the money they would get at the time of, after superannuation. Fixed deposits are considered as low risk investment as compared to investment in equity and people invest in fixed deposits in lieu of lower return against low risk. NCLT had while approving Resolution Plan, directed the CoC to allocate more amount to these investors so that their interest could be protected.

NCLT also suggested CoC to pay entire amount of Rs. 39 Crore to Army group, considering the nature of duties performed by them who are protecting the Nation, sacrificing their lives, difficult working conditions and human service to keep peace of the country.

C. What is left between the lines?

While the Resolution Plan of DHFL is approved, there are certain issues which could not find place in NCLT order.

- **Outstanding equity shares of DHFL –**

Shares of DHFL were allowed to be traded in stock exchange. Over 14 crore shares were traded on NSE alone and investors took delivery of over 9 crore shares valued close to Rs 200 crore on June 8. The shares which are worth Nil now, were being traded in the stock exchange at a price of Rs. 16.70. Stock markets ensures fair price discovery mechanism of securities and allow investors to freely trade in the securities. While it is provided under the Resolution Plan that securities of DHFL would be delisted and cancelled, it would have been fair that the trading on such share should have been suspended to protect the interest of investors.

- **Objectors and intervenors –**

Several parties such a Wadhavans, 63 Moons led by Jignesh etc are in process of filing appeals against order of NCLT before NCLAT. Therefore, it will take sometime for NCLT order to attain the finality.

D. Conclusion

Two major housing financiers – DHFL and IL&FS that were neck-deep in crisis were attempted for resolution, although through different mechanism. IL&FS resolution was being carried out under the direction of NCLAT whereas CIRP was initiated against DHFL. While the Resolution Plan of DHFL is approved however, IL&FS is yet to see light of the day. Successful Resolution of DHFL would set precedents and helpful in resolving stress in financial service providers going forward.

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